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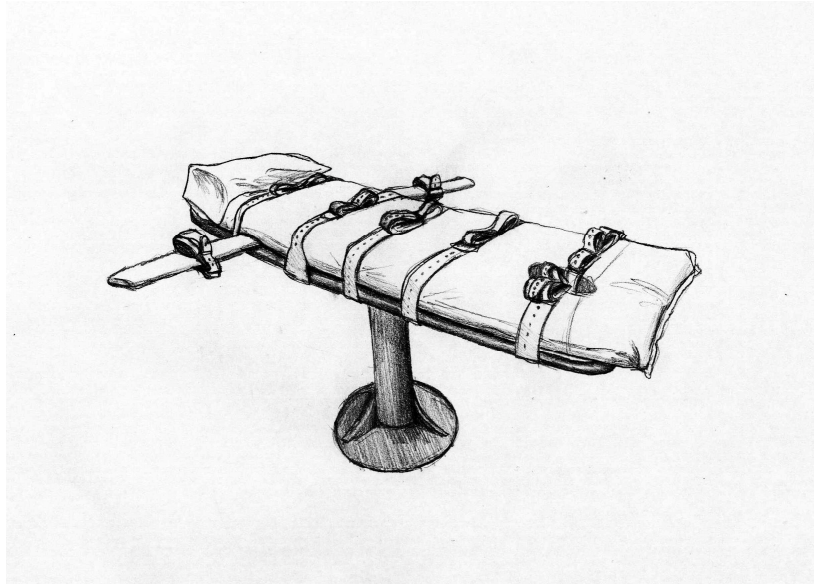
Time on the Cross A Meditation on Lethal Injection

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Art by Rachel Ternes^{**}

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Drawing by Rachel Ternes

DEATH BED

death bed pure white slate
modern medical mirage
dead wrong killing rite¹

THE DREAM

In modern penology, there is a recurring dream, that of the panacea of painless punishment: “Physical pain,” we are told by Michel Foucault, “the pain of the body itself, is no longer the constituent element of the penalty.”² Lethal injection is imagined to be the quintessential modern punishment— “[m]edicalized, bureaucratic, private, quick,” to quote Austin Sarat, as

¹ ROBERT JOHNSON, DEATH BED (original poem written for this essay).

² MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 11 (Vintage Books, 2nd ed.1995).

painless a lethal sanction as humanly possible.³ Lethal injection is thus meant to be so much “needle work”—light, precise, quick and clean, leaving no marks to speak of, even as the image of crucifixion, a primitive and brutal method of bodily torture and execution, lurks in the background.

NEEDLE WORK

Lethal Injection
a deadly intersection
in the search for perfection
in the war on crime.

-

A dead criminal
silent and still
cradled by catheters,
clinging to a cross.

-

Lethal Injection
the ultimate rejection
a poison confection
spread over the body of crime.

-

Condemned criminals
all in a row
suitable for framing.
Unmoving, uncomplaining.

-

³ AUSTIN SARAT, GRUESOME SPECTACLES: BOTCHED EXECUTIONS AND AMERICA’S DEATH PENALTY 144 (Stanford University Press, 2014). *See also* Deborah W. Denno, *The Lethal Injection Quandary: How Medicine Has Dismantled the Death Penalty*, 76 FORDHAM L. REV. 49, 49-128 (2007); Deborah W. Denno, *Death Bed*, 124 TriQuarterly Journal 141-68 (2006); ROBERT JOHNSON, DEATH WORK: A STUDY OF THE MODERN EXECUTION PROCESS (Wadsworth, 2nd ed. 2005).

Lethal Injection
a chemical subjection
for people of complexion
whose supine demise
lends authority to lies

-

Enshrined in law
beyond inspection
beneath reflection
in the search for perfection
in the war on crime.

-

“They sigh and drift off to sleep,” we hear.
“Much worse for their victims,” we’re told is clear.
“Really nothing to fear,” we all exclaim.
How can anyone protest or complain,
in the face of justice so tame,
so transparently humane.

-

Execution day, we pray
brings sweet, sound slumber.
Free of guilt or remorse or regret
we feel sure the number
put to death on prison gurneys
take their final journeys
decently, justly,
as if by personal election
in the search for perfection
in the war on crime.⁴

⁴ ROBERT JOHNSON, A ZOO NEAR YOU 136–37 (BleakHouse Publishing 2010)

THE REALITY

The dream of lethal injection as the perfect punishment gradually yields to a more critical view, one in which we now seek to envision, with growing trepidation, the interior experience of prisoners at the receiving end of the lethal needle, searching out the agony masked by paralytic drugs delivered by sterile injections that make the condemned prisoner into a sort of wax figure in a clinical museum of justice.⁵ Attention to last words and last meals, which grows as executions become more common, hints at the underlying humanity of persons under the medical drapes, waiting for the needle, strapped tight to the gurney.⁶ Lethal injection comes gradually to be seen as lethal rejection; death is dealt with hidden prejudice, trafficking in an insidious violence that remains largely hidden from view.⁷

STILL LIFE ON GURNEY

Here's the drill:
 A still shot,
 Man on gurney with-eyes-open
 Followed by
 Man on gurney with-eyes-shut,
 A minimalist killing we call justice
 -

⁵ Deborah W. Denno, *Lethal Injection Chaos Post-Blaze*, 102 GEO. L.J. 1331, 1332 (2014).

⁶ See generally Daniel LaChance, *Last words, last meals, and last stands: Agency and individuality in the modern execution process*, 32 LAW & SOC. INQUIRY, 701, 701–24 (2007); Linda Ross Meyer, *The Meaning of Death: Last Words, Last Meals*, in WHO DESERVES TO DIE: CONSTRUCTING THE EXECUTABLE SUBJECT 176–206 (University of Massachusetts Press 2011); Robert Johnson et al., *Death Row Confinement and the Meaning of Last Words*, 3 LAWS141, 141–52 (2014).

⁷ Denno, *supra* note 5. See also Robert Johnson, *Lethal Rejection*, 4 CRIME MEDIA CULTURE: AN INTERNATIONAL JOURNAL 279, 279–83 (2008).

The naked eye
 Like a camera
 Shows so much
 But reveals so little⁸

THE NIGHTMARE

Recently, several badly botched executions broadcast the violence of the process, which is to say, the forcible taking of life that is at the heart of lethal injection and all methods of execution.⁹ Veins are hard to find for many prisoners, we learn, who have histories of intravenous drug abuse. Finding useable veins proves painful and intimately invasive, the groin implicated with some regularity, discomfort and anxiety in full play. For a variety of reasons, including, of late, hard-to-find drugs suitable for use in execution protocols, lethal injections are botched at a much higher rate than other execution methods.¹⁰ Who knew? Not the official witnesses. They see virtually nothing. The modern execution ritual hides the violence of these failed procedures by shielding witnesses from the details of the killing process. Officials work behind scenes, hidden by curtains, until the body is properly secured. The prisoner is cleaned up, perhaps sedated, firmly secured to the gurney, like a prop. The curtain is drawn back, and the execution proceeds as if everything is normal.¹¹

New and untested drugs are becoming a new normal with lethal injection.¹² More or less settled procedures are giving way to experimentation on the fly; the new drugs, more even than the old, offer uncharted paths to death.¹³ Several prisoners, in their death throes, report

⁸ Robert Johnson, *Still Life on Gurney*, Adore Noir, Dec. 2011 at 47.

⁹ See generally SARAT, *supra* note 3; Denno, *supra* note 5.

¹⁰ SARAT, *supra* note 3, at 120.

¹¹ See generally Robert Johnson et al., *Can I Get a Witness? Thoughts on Viewing Executions*, 93 THE PRISON JOURNAL 11, 11–33 (2013).

¹² Denno, *supra* note 5, at 1331.

¹³ Denno, *supra* note 3, at 93–118; Denno, *supra* note 5, at 1354–81

intense burning sensations. “I feel my whole body burning,” said one man.¹⁴ Burning sensations suggest asphyxiation, the likely means of death by lethal injection.¹⁵ Officials say the man, and others like him, felt nothing. Modern executioners always say that, and mean it; one imagines they have to see this as a painless business.¹⁶

The words of these prisoners remind us that, without proper anesthesia, it is likely that all prisoners subjected to lethal injection experience what amounts to a burning at the stake or, more apt for the modern world, an electrocution, which itself has been termed a modern burning at the stake.¹⁷ We have long known that the electric chair inflicts pain equivalent to burning alive, though one that typically occurs quickly, with bodily reactions hidden by masks and constrained by straps that secure the body to the electric chair.

Lethal injection is the successor to the electric chair, that distinctly twentieth century method of killing that features a controlled and constrained yet awful, visible violence. The killing tableau of lethal injection is more tame than that of electrocution, the damage more subtle, less accessible to observation; a bit like a microwave, which does its work silently, from within, the interior cooked long before the exterior shows any sign of change. At bottom, however, lethal injection and electrocution are

¹⁴ Austin Sarat et al., *Lethal Injection Leads to the Most Botched Executions*, THE DAILY BEAST, Apr. 30, 2014, <http://www.thedailybeast.com/articles/2014/04/30/lethal-injection-leads-to-the-most-botched-executions.html>

¹⁵ Denno, *supra* note 5, at 1334.

¹⁶ See generally JOHNSON, *supra* note 3; SARAT, *supra* note 3, at 2–3 (noting that even with badly botched executions, including botched electrocutions that are vivid examples of the gruesome spectacles that are the focus of his book, officials, including judicial officials, maintain that the prisoners suffered no conscious pain). See also Sarat, *supra* note 14, at 2–3 (discussing the botched electrocution of Pedro Medina in Florida in 1997).

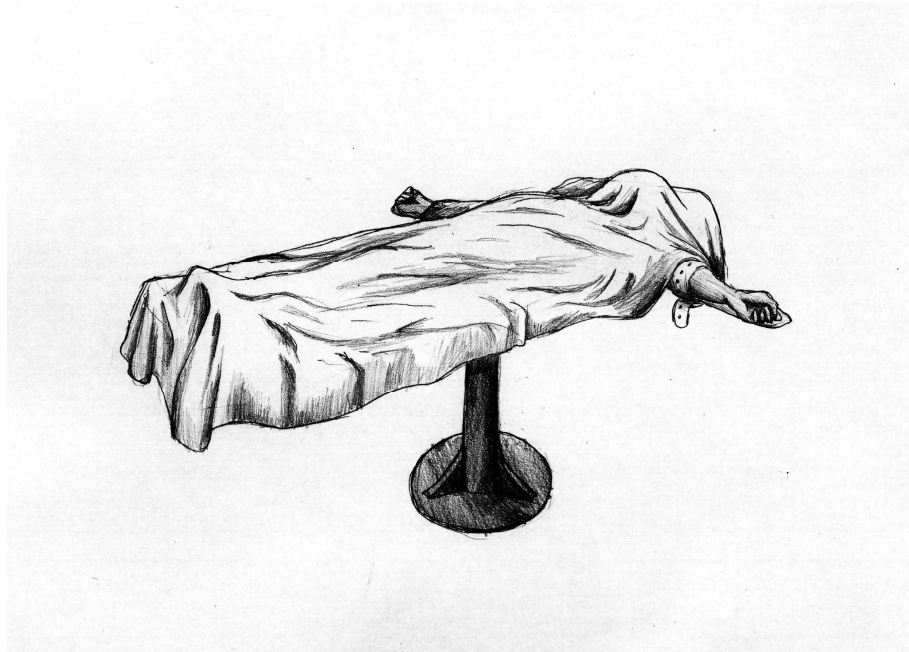
¹⁷ JOHNSON, *supra* note 3, at 44–45; SARAT, *supra* note 3, at ch. 3. Justice Brennan famously called electrocution “the contemporary technological equivalent of burning at the stake.” *Glass v. Louisiana* 471 U.S. 1080, 1094 (1985) (Brennan dissent).

one and the same: each method results in killings that, like burnt offerings of old, are rendered with a faith in a dubious notion of justice that blinds us to the moral stench we leave in our wake.

BURNT OFFERINGS

there
in the damp basement
of the aging prison
near the
chair
-
death
the scent of
burnt offerings
hangs in the
air
-
a
devil's brew of
mildew, flesh, and
fear
-
the
chair is gone
(the latest reform)
the smell lives
on¹⁸

¹⁸ JOHNSON, *supra* note 4, at 140.



Drawing by Rachel Ternes